IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.2590 and 2591 of 2006
and M.P.No.1 of 2006

The Commissioner of Income Tax
Coimbatore. .. Appellant in both the Appeals

Vs.

S.Jayaprakash .. Respondent in both the Appeals

Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 28.4.2006 in ITA Nos.365 and 812/Mds/2002, for the assessment year 1998-1999 against the order of the Commissioner of Income Tax, Appeals II, Coimbatore dated 9.2.2002 and made in IT Appeal No.112-C/2001-2002 against the order of the Income Tax Officer, Ward 1(2) Pollachi dated 27.3.2001 and made in P.A.No.GIR NO.J.2214.

For Appellant : Mr.N.Muralikumaran

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal in ITA Nos.365 and 812/Mds/2002 dated 28.4.2006 for the assessment year 1998-1999.

2.1. The brief facts are that the assessee built a Kalayana Mandapam and during the survey, it was pointed out to the assessee that the amount of Rs.21 lakhs debited for the construction of the plinth area was very low and hence, the assessee agreed for the addition of Rs.5 lakhs towards the cost of construction. On assessment, the Assessing Officer referred the cost of construction to the Departmental Valuation Officer, who arrived at the cost of Rs.36.36 lakhs. Since there was no response from the assessee for the objections being called for with regard to the valuation of the

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Departmental Valuation Officer, the assessing officer added Rs.10 lakhs to the cost of construction, as against the difference of Rs.10.41 lakhs. Aggrieved by the same, the assessee went on appeal before the Commissioner of Income-tax (Appeals) and the Commissioner found that the plinth area method of estimate is reasonable as the assessee had not produced complete bills and also held that the State PWD rates are more reasonable. The Commissioner also arrived at the difference in the cost of construction as Rs.2.14 lakhs as against Rs.10 lakhs arrived at by the assessing officer.

2.2. Against the order of the Commissioner, both, the assessee and the revenue preferred appeals before the Income-tax Appellate Tribunal and the Tribunal decided the entire issue in favour of the assessee and also observed that adoption of State PWD rates would be more reasonable while arriving at the cost of construction. Aggrieved by the said order of the Tribunal, the Revenue has preferred the above appeals raising the following substantial questions of law:

> "1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the State PWD rates had to be adopted while arriving at the cost of construction of the Kalyanamandapam built by the assessee ?
> 2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the books of account were not rejected by the assessing officer and therefore, no addition could be called for on the ground of cost of construction, when the assessee himself had admitted that the books of account were not properly maintained and had offered 5 lakhs for addition towards the cost of construction as unexplained investment ? "

3. Since the issue raised in the second question is consequential to the first question raised, both are dealt with together.

4. Mr.N.Muralikumaran, learned counsel appearing for the Revenue, fairly submits that the issue raised in the above questions is squarely covered against the Revenue by the decision of this Court in COMMISSIONER OF INCOME-TAX v. V.T.RAJENDRAN (T.C.Nos.1256 to 1258 of 2006 dated 10.7.2006), wherein it is held that the report of the Departmental Valuation Officer cannot be a basis because the valuation cannot be an arithmetical appreciation of the materials used for the construction nor the expenses incurred by the assessee in that regard, as the variations are bound to be there in the value of the construction between Central PWD rates and State PWD rates themselves.

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5. That apart, this Court, in COMMISSIONER OF INCOME-TAX v. D.SUBRAMANIAN, (T.C.No.2494 of 2006 dated 6.11.2006), held that the determination of cost of construction on the basis of the valuation reports as well as the application of State PWD rates or Central PWD rates while arriving at the cost of construction are purely questions of fact and hence, cannot be gone into.

6. Further, the Rajasthan High Court in COMMISSIONER OF INCOME-TAX v. ELEGANT HOMES PVT. LTD. [(2003) 259 ITR 232], also held that the cost of construction was basically a question of fact and therefore, the view taken by the Income-tax Appellate Tribunal on the issue of investment in construction, could not be interfered with.

7. In view of the above, holding that the issues raised in the above questions are purely questions of fact, we find no question of law much less substantial question of law that arises for our consideration. Accordingly, the appeals are dismissed. Consequently, connected M.P. is also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

sra

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Rajaji Bhavan, Besant Nagar, Chennai-90.

2.The Commissioner of Income-
Tax (Appeals)II, Coimbatore.

3.The Income-tax Officer,
Ward 1(2), Pollachi.

4.The Commissioner of Income Tax,
Coimbatore

1 cc to Mr.N.Muralikumaran, Advocate, Sr. 57953

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MDR (CO)
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